

Senate Bill No. 1327

CHAPTER 886

An act to repeal and add Sections 44031 and 87031 of the Education Code, to add Sections 18001, 36501.5, and 53060.3 to, and to repeal and add Section 31011 of, the Government Code, and to repeal and add Section 1198.5 of the Labor Code, relating to inspection of personnel files.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1327, Escutia. Employees: inspection of personnel records by employees.

(1) Existing law requires employers to make employee personnel files available for inspection by employees, and prescribes procedures for that inspection. Existing law exempts from this requirement, public employers, the state or any state agency, and specified public school districts. Other existing law requires public school districts, community colleges, cities, counties, or local agencies to also make personnel records available to employees, and prescribes various procedures for this inspection, depending on who the employer is.

This bill would harmonize the law applicable to all of the above employers with regard to inspection of personnel files. The bill would require an employer to make the contents of personnel files available to an employee at reasonable intervals and reasonable times, as provided, but would exempt from inspection, records relating to the investigation of a criminal offense, letters of reference, and specified ratings and reports.

This bill would also provide that, with respect to a public school district or a community college, information of a derogatory nature shall not be entered into an employee's personnel records unless the employee is given an opportunity to review and comment on that information. The bill would exempt public safety officers and employees of state agencies from its provisions. By imposing new duties on local agencies, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000

statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 44031 of the Education Code is repealed.

SEC. 2. Section 44031 is added to the Education Code, to read:

44031. (a) Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) In addition to subdivision (a), all of the following shall apply to an employee of a school district:

(1) Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have attached to any derogatory statement, his or her own comments. The review shall take place during normal business hours and the employee shall be released from duties for this purpose without salary reduction.

(2) The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the district.

(3) A noncredentialed employee shall have access to his or her numerical scores obtained as a result of a written examination.

(4) Except as provided in paragraph (3), nothing in this section shall entitle an employee to review ratings, reports, or records that (A) were obtained prior to the employment of the person involved, (B) were prepared by identifiable examination committee members, or (C) were obtained in connection with a promotional examination.

SEC. 3. Section 87031 of the Education Code is repealed.

SEC. 4. Section 87031 is added to the Education Code, to read:

87031. (a) Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) In addition to subdivision (a), all of the following shall apply to an employee of a school district:

(1) Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have attached to any derogatory statement, his or her own comments. The review shall take place during normal business hours and the

employee shall be released from duty for this purpose without salary reduction.

(2) The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the district.

(3) Nothing in this section shall entitle an employee to review ratings, reports, or records that (A) were obtained prior to the employment of the person involved, (B) were prepared by identifiable examination committee members, or (C) were obtained in connection with a promotional examination.

SEC. 5. Section 18001 is added to the Government Code, to read:

18001. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

SEC. 6. Section 31011 of the Government Code is repealed.

SEC. 7. Section 31011 is added to the Government Code, to read:

31011. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

SEC. 8. Section 36501.5 is added to the Government Code, to read:

36501.5. Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

SEC. 9. Section 53060.3 is added to the Government Code, to read:

53060.3. (a) Every employee of a local agency has the right to inspect personnel records pursuant to Section 1198.5 of the Labor Code.

(b) As used in this section:

(1) “City” means any city or municipal corporation, whether general law city or charter city.

(2) “County” means any county, whether general law county or charter county, including a city and county.

(3) “Local agency” means any city, county, city and county, special district, authority, community redevelopment agency, or other political subdivision of the state.

SEC. 10. Section 1198.5 of the Labor Code is repealed.

SEC. 11. Section 1198.5 is added to the Labor Code, to read:

1198.5. (a) Every employee has the right to inspect the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available to the employee at reasonable intervals and at reasonable times. Except as provided in paragraph (3) of subdivision (c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.

(c) The employer shall do one of the following:

(1) Keep a copy of each employee's personnel records at the place where the employee reports to work.

(2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.

(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

(d) The requirements of this section shall not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights, Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(e) The Labor Commissioner may adopt regulations that determine the reasonable times and reasonable intervals for the inspection of records maintained by an employer that is not a public agency.

(f) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(g) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection of personnel records that are established as the result of agreements between an employer and a recognized employee organization.

SEC. 12. In adding Sections 36501.5 and 53060.3 to, and in repealing and adding Section 31011 of, the Government Code by this act, it is the intent of the Legislature that those sections, in addition to applying to a general law city or county, as appropriate, also apply to a charter city or a charter county, including a city and county. The Legislature further finds and declares that the right of employees to inspect personnel records is a fundamental right of employment and, as such, constitutes an issue of statewide concern and is not a municipal affair.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act

contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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